

**IN THE
SUPREME COURT OF INDIANA**

CASE NUMBER:

ORDER AMENDING ADMINISTRATIVE RULES

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, *Rule 5* of the *Indiana Administrative Rules* is amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

ADMINISTRATIVE RULES

Rule 5. Payment and Notification Procedures

...

(B) Senior Judges. The Division of State Court Administration shall administer the payment procedures for senior judges in accordance with the provisions set forth in this rule.

(1) *Appointment.* ~~As provided by statute, The Court of Appeals, a circuit or, superior, county or probate court may apply to request that the Supreme Court for appointment of a provide senior judge to serve the court services. The application request must contain the reasons for the request and the estimated duration of the need for a senior judge services. Upon approving an application the request, the Supreme Court may appoint a senior judge one or more senior judges to serve the requesting court for the duration specified in the application consistent with this rule. All appointments shall remain in effect until the end of the calendar year in which the appointment was made. The Supreme Court shall fix the term or period of time for the senior judge appointment.~~

(2) *Per diem allowance.* ~~As provided by statute, a senior judge is entitled to a per diem allowance of fifty dollars (\$ 50) per day and reimbursement for mileage and reasonable expenses incurred in performing the duties of senior judge for each day served. A senior judge may not be compensated as such for more than one hundred (100) calendar days in the aggregate during any one calendar year. However, senior judges shall be allowed to retain jurisdiction of individual cases beyond one hundred (100) days of service where disposal and/or resolution of the matter so warrants. A senior judge may~~

~~retain jurisdiction in an individual case by an affirmative act evidencing intent to retain jurisdiction. A senior judge may not be compensated for services rendered beyond one hundred (100) days of service in any one calendar year.~~

~~(3) *Procedure for payment.* A senior judge shall file his claim for compensation with the Division on forms provided by such agency as prescribed by the State Board of Accounts. The Division shall promptly present the claim form to the Auditor of State for payment. Claims for compensation shall be filed no later than ninety (90) days from the date of service.~~

~~(4) *Qualification for benefits.* As provided by statute, a senior judge is entitled to state insurance benefits upon qualifying as an "employee" of the state. Upon qualification, a senior judge is further entitled to enroll in state employee assistance plans.~~

~~A senior judge shall be deemed an employee of the state thirty (30) days following his or her appointment by the Supreme Court for service for a period of time equal to or greater than thirty (30) working days. State insurance benefits and entitlements based on such service shall continue for the duration of the calendar year during which appointment took place and the period of continuous service; provided, however, that in the event a senior judge does not serve at least thirty (30) days during any calendar year of appointment, all state insurance benefits and entitlements based on service as a senior judge shall cease and terminate at the end of that year. At the beginning of each calendar year, the judge of the circuit or superior court in which the senior judge served the previous year may request reappointment of the senior judge to that court. A senior judge whose entitlement to state insurance benefits has been terminated under this subsection shall be entitled to state insurance benefits upon appointment for any subsequent calendar year only after serving at least thirty (30) days as a senior judge during that year.~~

~~(5) *Definitions.* As used in this rule, the term "state insurance benefits" includes group health, life, dental, and vision insurance benefits.~~

(2) *Number of Senior Judge Days for Requesting Court.* Not later than June 30 of each year, the Supreme Court shall fix, based upon the recommendation of the Executive Director of the Indiana Supreme Court Division of State Court Administration, who shall use the Indiana Weighted Caseload Measures System, the annual statistical reports, and other relevant criteria, the number of senior judge days that each court may use during the twelve (12) months starting July 1. Every court authorized in this rule to use senior judges will be entitled to a minimum of ten (10) days of senior judge service during the year of appointment.

(3) *Qualification for Senior Judge Status.* A former judge who is certified by the Indiana Judicial Nominating Commission may serve as senior judge. Each year the Indiana Judicial Nominating Commission shall certify to the Supreme Court that a former judge:

(a) (i) has served as an elected or appointed judge for at least four (4) years and (ii) at least one of those years was within five (5) years of the application or, in the event the four years of service as an elected or appointed judge was more than five (5) years prior to the application, has served at least thirty (30) days as a senior judge during a calendar year within five (5) years of the application; except that the Indiana Judicial Nominating Commission may, upon the finding of exceptional circumstances, waive the foregoing criteria and certify a senior judge with less service than specified above;

(b) agrees to serve as a senior judge for at least thirty (30) days in the year of appointment and has not in any previous year of service failed to serve for at least thirty (30) days without good cause as determined by the Indiana Judicial Nominating Commission.

(c) agrees to comply with the Code of Judicial Conduct and further agrees to not serve as an elected or appointed official of a governmental entity or sub-division outside the judicial branch of government;

(d) agrees to serve where assigned; and that the service shall be substantially equivalent to the daily calendar of the court to which the senior judge is assigned;

(e) agrees to continue to serve in all special judge cases in which the former judge was serving as a special judge at the time the former judge left office as a regular judge without receiving senior judge credit for such service; however, upon the finding of exceptional circumstances at the discretion of the Supreme Court, a senior judge serving as a special judge may receive senior judge credit;

(f) agrees not to practice law in the courts in which the senior judge is appointed or assigned as senior judge;

(g) is fit to serve as a senior judge.

(4) *Jurisdiction.* A senior judge shall have the same jurisdiction as the presiding judge of the court where the judge is appointed but only during the days that the senior judge is serving in such court. A senior judge who has been appointed to serve in a court shall have jurisdiction at any time during such appointment to officiate at marriages the same as the judge of the court of service. A senior judge retains jurisdiction in an individual case on the order of the presiding judge of the court in which the case is pending;

(5) *Oath of Office.* Upon initial certification as a senior judge, the senior judge shall take an oath of office and shall file it with the Clerk of the Indiana Supreme Court.

(6) *Per Diem Allowance.* As provided by statute, a senior judge is entitled to senior judge service credit and a per diem allowance of fifty dollars (\$50.00) per day for the first thirty (30) days of service in a calendar year. Pursuant to statute, the Indiana Supreme Court may adjust the per diem rate and increase it to not more than one hundred dollars

(\$100.00) for each day of service after the first thirty (30) days. A senior judge who serves substantially shorter time than the daily calendar of the court where the judge is serving may, with the permission of the Executive Director, accumulate and consolidate such service times into a day's credit. A senior judge is entitled to reimbursement for mileage and reasonable expenses incurred in performing the duties of senior judge for each day served. A senior judge may not be compensated as such for more than one hundred (100) calendar days in the aggregate during any one calendar year.

(7) *Procedure for Payment.* A senior judge shall file a claim for compensation with the Division of State Court Administration (Division) on forms provided by such agency as prescribed by the State Board of Accounts. The Division shall promptly present the claim to the Auditor of State for payment. Claims for compensation shall be filed no later than ninety (90) days from the date of service.

(8) *Qualification for Benefits.* As provided by statute, a senior judge who is appointed by the Supreme Court to serve for a period equal to or greater than thirty (30) working days is a state employee for purposes for state insurance benefits. A senior judge becomes eligible for state insurance upon appointment. In the event a senior judge fails to serve at least thirty (30) days during any year of appointment, that senior judge's eligibility to state insurance benefits based on senior judge service shall cease and terminate at the end of that year. A senior judge whose eligibility to state insurance benefits has terminated under this subsection may become eligible again if the judge is certified by the Judicial Nominating Commission pursuant to Section (B)(3) of this Rule and is appointed to serve in a court, but only after serving as a senior judge a minimum of thirty (30) days during the year of appointment. A senior judge who waives per diem pay is entitled to receive senior judge service credit and to state insurance benefits for service that substantially complies with the appointment of the Supreme Court. As used in this rule, term "state insurance benefits" includes group health, life, dental, and vision insurance benefits and other benefits offered by the State of Indiana to its elected officials from time to time.

(9) *Senior Judge Serving as Mediator.* A senior judge who is also a registered mediator and serves as a mediator in court-ordered mediation pursuant to IC 33-4-8-3, or on a pro bono basis, may receive senior judge service credit for said mediation service provided that the senior judge is not compensated at a rate greater than the per diem rate for senior judges.

(C) Notification.

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This amendment shall take effect immediately.

The Clerk of this Court is directed to forward a copy of this Order to the clerk of each circuit court in the state of Indiana; Attorney General of Indiana; Legislative

Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and the West Group.

The West Group is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this _____ day of December, 2003.

Randall T. Shepard
Chief Justice of Indiana

All Justices concur.